

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

MARIA G., o/b/o E.G.,

Plaintiff,

v.

ANDREW M. SAUL,
Commissioner of Social Security,

Defendant.

CASE NO. C19-5999-MAT

ORDER RE: SOCIAL SECURITY
DISABILITY APPEAL

Plaintiff, the mother of minor child E.G., proceeds through counsel in her appeal of a final decision of the Commissioner of the Social Security Administration (Commissioner). The Commissioner denied plaintiff's application for Supplemental Security Income (SSI) after a hearing before an Administrative Law Judge (ALJ). Having considered the ALJ's decision, the administrative record (AR), and all memoranda of record, this matter is REMANDED for a de novo hearing.

FACTS AND PROCEDURAL HISTORY

Plaintiff¹ was born on XXXX, 2009.² She is a school-age child. (AR 20.)

Plaintiff protectively filed an SSI application on May 12, 2015, alleging disability

¹ Although the minor child E.G. appears through her mother Maria G., "plaintiff" will herein refer to the minor child.

² Dates of birth must be redacted to the year. Fed. R. Civ. P. 5.2(a)(2) and LCR 5.2(a)(1).

1 beginning November 1, 2011. The application was denied initially and on reconsideration. An
2 initial scheduled hearing was dismissed when plaintiff did not appear. (AR 94-98.) Plaintiff
3 appealed and the Appeals Council ordered a new hearing, finding plaintiff had shown good cause
4 for not appearing. (AR 101-02.)

5 ALJ Rebecca L. Jones conducted a hearing on March 26, 2019, taking testimony from
6 plaintiff and a medical expert. (AR 41-76.) A Portuguese interpreter was present and plaintiff
7 was represented by a non-lawyer representative. On April 30, 2019, the ALJ issued a decision
8 finding plaintiff not disabled. (AR 17-34.)

9 Plaintiff timely appealed. The Appeals Council denied plaintiff's request for review on
10 August 21, 2019 (AR 1-5), making the ALJ's decision the final decision of the Commissioner.
11 Plaintiff appealed this final decision of the Commissioner to this Court.

12 **JURISDICTION**

13 The Court has jurisdiction to review the ALJ's decision pursuant to 42 U.S.C. § 405(g).

14 **DISCUSSION**

15 The social security regulations set forth a three-step sequential evaluation process for
16 determining whether a child is disabled. 20 C.F.R. § 416.924. At step one, it must be determined
17 whether the claimant is performing substantial gainful activity.³ *Id.* The ALJ found plaintiff had
18 not engaged in substantial gainful activity. If the claimant is not performing substantial gainful
19 activity, at step two, it must be determined whether the claimant has a "severe" medically
20 determinable impairment or combination thereof. *Id.* The ALJ found plaintiff's type 1 diabetes
21 severe.

22 If the claimant has a severe impairment or combination of impairments that meets the
23

³ School attendance is not considered substantial gainful activity. 20 C.F.R. § 416.972.

1 duration requirement, it must be determined at step three whether that impairment meets, medically
2 equals, or functionally equals a listed impairment in 20 C.F.R. § 404, Part B, Appendix 1, Subpart
3 P. *Id.* If the child's impairment meets or medically equals a listed impairment, then the claimant
4 will be found disabled. Considering listings 109.00, 109.01 and 109.08 (endocrine disorders), the
5 ALJ found plaintiff does not have an impairment or combination of impairments that meets or
6 medically equals the severity of a listed impairment.

7 If the impairment does not meet or medically equal a listed impairment, it must be
8 determined whether the impairment *functionally* equals a listed impairment by assessing the
9 child's limitations in six broad areas of functioning called "domains." The domains include: (1)
10 acquiring and using information, (2) attending and completing tasks, (3) interacting and relating
11 with others, (4) moving about and manipulating objects, (5) caring for oneself, (6) health and
12 physical well-being. 20 C.F.R. § 416.926a. The claimant's impairment will be considered
13 functionally equivalent if the claimant has "marked" limitations in two domains, or "extreme"
14 limitations in one domain. *Id.* A determination of functional equivalence is the responsibility of
15 the state agency medical or psychological staff at the initial and reconsideration levels, of an ALJ
16 at the hearing level, and of the Appeals Council at that level. 20 C.F.R. § 416.926a(n). In this
17 case, the ALJ found plaintiff does not have an impairment or combination of impairments that
18 result in "marked" limitations in two domains or "extreme" limitation in one domain.

19 If a claimant survives all three steps and has an impairment that meets, medically equals,
20 or functionally equals a listed impairment for the required duration, he or she will be found
21 disabled for purposes of SSI. Finding plaintiff did not meet these requirements, the ALJ found
22 plaintiff not disabled since the date of application.

23 This Court's review of the ALJ's decision is limited to whether the decision is in

1 accordance with the law and the findings supported by substantial evidence in the record as a
2 whole. *See Penny v. Sullivan*, 2 F.3d 953, 956 (9th Cir. 1993). *Accord Marsh v. Colvin*, 792 F.3d
3 1170, 1172 (9th Cir. 2015) (“We will set aside a denial of benefits only if the denial is unsupported
4 by substantial evidence in the administrative record or is based on legal error.”) Substantial
5 evidence means more than a scintilla, but less than a preponderance; it means such relevant
6 evidence as a reasonable mind might accept as adequate to support a conclusion. *Magallanes v.*
7 *Bowen*, 881 F.2d 747, 750 (9th Cir. 1989). If there is more than one rational interpretation, one of
8 which supports the ALJ’s decision, the Court must uphold that decision. *Thomas v. Barnhart*, 278
9 F.3d 947, 954 (9th Cir. 2002).

10 Plaintiff argues the ALJ erred by failing to satisfy the duty to fully and fairly develop the
11 record and to assure the claimant’s interests are considered, and by failing to adequately obtain
12 medical expert testimony. She requests remand for a de novo hearing. The Commissioner argues
13 the ALJ’s decision has the support of substantial evidence and should be affirmed.

14 Expert Testimony

15 In a claim for disability filed on behalf of an individual who has not attained the age of
16 eighteen years, the Commissioner is required to make reasonable efforts to ensure a qualified
17 specialist evaluates the claim. 42 U.S.C. § 1382c(a)(3)(I). Addressing the scope of the
18 Commissioner’s responsibility, the Ninth Circuit holds that evaluation by an appropriate specialist
19 must be based on “the record in its entirety”, rather than “simply constructing his own case
20 evaluation from the evidence in the record.” *Howard ex rel. Wolff v. Barnhart* 341 F.3d 1006,
21 1014 (9th Cir. 2003). Here, the core of plaintiff’s dispute is that, by taking medical expert
22 testimony before plaintiff and her mother testified about her impairment and functional limitations,
23 the expert’s opinion was not informed by that evidence and, therefore, not based on “the record in

1 its entirety.” Consequently, plaintiff argues, the medical expert’s testimony was legally
2 insufficient. Plaintiff asserts this error also violated the ALJ’s duty to develop the record, which
3 is heightened when a claimant is represented by a non-attorney and, as in this case, is a young child
4 whose mother does not speak English. *See generally Tonapetyan v. Halter*, 242 F.3d 1144, 1150
5 (9th Cir. 2001) (“The ALJ in a social security case has an independent duty to fully and fairly
6 develop the record and to assure that the claimant’s interests are considered.”) (internal quotation
7 marks and quoted sources omitted).

8 While it may not always be harmful error in a childhood disability case for an ALJ to rely
9 on the opinion of a medical expert who has not heard the testimony of the child and the child’s
10 representative, the Court, in this case, finds the failure requires reversal and remand. As the ALJ
11 acknowledged, the medical expert was not asked to provide an opinion regarding the application
12 of the six functional equivalence domains. (AR 22.) Rather, the ALJ separately construed hearing
13 testimony not heard or considered by the medical expert, finding plaintiff not sufficiently limited
14 in any of the functional domains. Without the benefit of medical expert review, the ALJ’s
15 construction of the evidence fell short. On remand, a de novo hearing should be conducted so as
16 to include a review of the entire record by an appropriate medical specialist.

17 CONCLUSION

18 For the reasons set forth above, this matter is REMANDED for further proceedings.

19 DATED this 28th day of April, 2020.

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22 Mary Alice Theiler
23 United States Magistrate Judge